

EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Daniel Johnson, Jr., SBN 57409 Morgan, Lewis & Bockius LLP One Market, Spear Street Tower San Francisco, CA 94105 TELEPHONE NO.: (415) 442-1000 FAX NO.: (415) 442-1001 ATTORNEY FOR (Name): Biosearch Technologies, Inc.		CM-010 FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY APR 23 2010 CLERK OF THE SUPERIOR COURT By BARBARA LAMOTTE Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon St. MAILING ADDRESS: René C. Davidson Alameda County Courthouse CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:		CASE NUMBER: RG70511219 JUDGE: DEPT:
CASE NAME: Biosearch Technologies, Inc. v. Life Technologies Corporation		
CIVIL CASE COVER SHEET		
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIPD/WO (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WO (23) Non-PIP/WO (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/WO tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **Six**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **4/22/2010**
Daniel Johnson, Jr., SBN 57409
 (TYPE OR PRINT NAME)

Daniel Johnson
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- NOTICE**
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
 - File this cover sheet in addition to any cover sheet required by local court rule.
 - If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
 - Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

BR
 FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (<i>not asbestos or toxic/environmental</i>) (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other P/DPD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/DPD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other P/DPD/WD Non-P/DPD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (<i>not medical or legal</i>) Other Non-P/DPD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (15)	Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (<i>not unlawful detainer or wrongful eviction</i>) Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (<i>not provisionally complex</i>) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>) Unlawful Detainer Commercial (31) Residential (32) Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>) Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (<i>non-domestic relations</i>) Sister State Judgment Administrative Agency Award (<i>not unpaid taxes</i>) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICO (27) Other Complaint (<i>not specified above</i>) (42) Declaratory Relief Only Injunctive Relief Only (<i>non-harassment</i>) Mechanics Lien Other Commercial Complaint Case (<i>non-tort/non-complex</i>) Other Civil Complaint (<i>non-tort/non-complex</i>) Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (<i>not specified above</i>) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief from Late Claim Other Civil Petition
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Unified Rules of the Superior Court of California, County of Alameda

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: Biosearch Technologies, Inc. v. Life Technologies Corporation

Case Number:

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
☒ Oakland, Rene C. Davidson Alameda County Courthouse (446)
 ☐ Hayward Hall of Justice (447)
 ☐ Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no
Other PI/PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	<input type="checkbox"/> 75 Asbestos (D) <input type="checkbox"/> 89 Product liability (not asbestos or toxic tort/environmental) (G) <input type="checkbox"/> 97 Medical malpractice (G) <input type="checkbox"/> 33 Other PI/PD/WD tort (G)
Non - PI/PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (18) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G) <input type="checkbox"/> 80 Civil rights (G) <input type="checkbox"/> 84 Defamation (G) <input type="checkbox"/> 24 Fraud (G) <input type="checkbox"/> 87 Intellectual property (G) <input type="checkbox"/> 59 Professional negligence - non-medical (G) <input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36) Other employment (15)	<input type="checkbox"/> 38 Wrongful termination (G) <input type="checkbox"/> 85 Other employment (G) <input type="checkbox"/> 53 Labor comm award confirmation <input type="checkbox"/> 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wmty (06) Collections (09) Insurance coverage (18) Other contract (37)	<input checked="" type="checkbox"/> 04 Breach contract / Wmty (G) <input type="checkbox"/> 81 Collections (G) <input type="checkbox"/> 86 Ins. coverage - non-complex (G) <input type="checkbox"/> 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G) <input type="checkbox"/> 17 Wrongful eviction (G) <input type="checkbox"/> 36 Other real property (G)
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	<input type="checkbox"/> 94 Unlawful Detainer - commercial <input type="checkbox"/> 47 Unlawful Detainer - residential <input type="checkbox"/> 21 Unlawful detainer - drugs Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	<input type="checkbox"/> 41 Asset forfeiture <input type="checkbox"/> 62 Pet. re: arbitration award <input type="checkbox"/> 49 Writ of mandate Is this a CEQA action (Publ. Res. Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 64 Other judicial review
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	<input type="checkbox"/> 77 Antitrust / Trade regulation <input type="checkbox"/> 82 Construction defect <input type="checkbox"/> 78 Claims involving mass tort <input type="checkbox"/> 91 Securities litigation <input type="checkbox"/> 93 Toxic tort / Environmental <input type="checkbox"/> 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment <input type="checkbox"/> 08 Confession of judgment
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	<input type="checkbox"/> 90 RICO (G) <input type="checkbox"/> 88 Partnership / Corp. governance (G) <input type="checkbox"/> 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name <input type="checkbox"/> 69 Other petition

APR-23-2010 FRI 11:37 AM MORGAN LEWIS

FAX NO. 8508437771

P. 04

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):****LIFE TECHNOLOGIES CORPORATION**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ENDORSED
FILED
ALAMEDA COUNTY**

APR 23 2010

CLERK OF THE SUPERIOR COURT

By **BARBARA LAMOTTE**
Deputy**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
BIOSEARCH TECHNOLOGIES, INC.**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información e continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentados por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Alameda
René C. Davidson Alameda County Courthouse
1225 Fallon Street
Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Daniel Johnson, Jr., SBN 57409
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105
(415) 442-1000 (415) 442-1001

DATE: APR 23 2010

(Fecha)

DAT S. SWEETENClerk, by **BARBARA LAMOTTE**

(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served1. ☐ as an individual defendant.2. ☐ as the person sued under the fictitious name of (specify):3. ☒ on behalf of (specify): Life Technologies Corporationunder: ☒ CCP 418.10 (corporation)☐ CCP 418.20 (defunct corporation)☐ CCP 418.40 (association or partnership)☐ other (specify):☐ CCP 418.60 (minor)☐ CCP 418.70 (conservatee)☐ CCP 418.90 (authorized person)4. ☒ by personal delivery on (date): 5/20/10

Page 1 of 1

DANIEL JOHNSON, JR., State Bar No. 57409
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Attorneys for Plaintiff
BIOSEARCH TECHNOLOGIES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BIOSEARCH TECHNOLOGIES, INC.,

Plaintiff,

v.

LIFE TECHNOLOGIES CORPORATION,
and DOES 1 through 25, inclusive,

Defendants.

Case No.

COMPLAINT FOR

- (1) BREACH OF CONTRACT**
- (2) UNFAIR COMPETITION**
(CAL. BUS. & PROF. CODE § 17200)
- (3) COMMON LAW UNFAIR**
COMPETITION
- (4) UNJUST ENRICHMENT**
- (5) UNFAIR ADVERTISING**
(CAL. BUS. & PROF. CODE § 17500)
- (6) INTERFERENCE WITH**
PROSPECTIVE ECONOMIC
ADVANTAGE

Amount demanded exceeds \$25,000

DEMAND FOR JURY TRIAL

1 **INTRODUCTION AND BACKGROUND**

2 Plaintiff Biosearch Technologies, Inc. ("Biosearch") for its complaint against Defendant
3 Life Technologies Corporation ("Defendant Life Technologies"), and Does 1 through 25
4 (collectively, "Defendants"), allege as follows:

5 **THE PARTIES**

6 1. Plaintiff Biosearch is a California corporation that maintains its principal place of
7 business in Novato, California 94949.

8 2. On information and belief, Defendant Life Technologies is a Delaware corporation
9 that maintains a place of business at 6055 Sunol Drive, Pleasanton, California 94566. Defendant
10 Life Technologies was formed from the merger of Invitrogen Corporation and Applera
11 Corporation's Applied Biosystems Group in June 2008.

12 3. Biosearch is unaware of the names of the Defendants sued herein as DOES 1
13 through 25 and thus sues these Defendants by those fictitious names. Biosearch will amend this
14 complaint to allege their true names and capacities when ascertained. Biosearch alleges on
15 information and belief that each of said fictitiously named Defendants is responsible in some
16 manner for the damages alleged in this complaint and that the injuries sustained by Biosearch
17 were proximately caused by the actions and/or omissions of those Defendants.

18 **JURISDICTION AND VENUE**

19 4. This Court has jurisdiction over this action pursuant to California Code of Civil
20 Procedure § 410.10 because Defendant Life Technologies does business in and has sufficient
21 contacts with the State of California, and each cause of action is predicated on California law.

22 5. Venue of this action in Alameda County is proper pursuant to California Code of
23 Civil Procedure § 395.5 because Alameda County is where, among other things, Defendant Life
24 Technologies maintains a place of business and the Comprehensive Limited Use Agreement (the
25 "EULA," attached hereto as Exhibit A) at issue in this case was to be performed and where, in
26 part, the EULA was breached.

27 6. Venue is also proper in this Court pursuant to California Code of Civil Procedure
28 § 395.5 because the injury for which relief is sought occurred in Alameda County.

1 **NATURE OF THIS ACTION AND GENERAL ALLEGATIONS**

2 7. Biosearch is a leading provider of specialized chemical reagents and
3 oligonucleotide probes for use in pharmacogenomic research, DNA sequencing, and gene
4 expression analysis. Among other things, Biosearch supplies fluorescence-quenched probes and
5 primers that are a critical component to gene expression analysis and disease detection.

6 8. The fluorescence-quenched probes sold by Biosearch incorporate, on one end, a
7 reporter dye that emits fluorescence, and, on the other end, a quencher dye that inhibits
8 fluorescence from the reporter dye. In or around 2000, Biosearch developed an exceptionally
9 dark quencher, with broad absorption spectra, known as the Black Hole Quencher® (“BHQ®”).
10 The BHQ® technology has been patented and has become a standard product in the industry and
11 is currently licensed to numerous biotechnology companies.

12 9. From at least as early as 2001, Biosearch sold BHQ® probes, active esters, and
13 amidites to Defendant Life Technologies’ predecessor, Invitrogen Corporation. At all times
14 relevant herein Biosearch included a EULA with all purchases of its BHQ®s. The EULA was
15 included in all contracts, published on Biosearch’s web site, and included in any shipments made
16 to customers or by licensed Distributors. The EULA prohibits use of BHQ®s, or products
17 incorporating them, for anything other than research and development purposes and explicitly
18 prohibits “any commercial, clinical, *in vitro* diagnostic or other use” of BHQ®s, or products
19 incorporating them, and further disclaims any “implied license for commercial use” with respect
20 to the same. Under the EULA, “commercial use” includes but is not limited to the sale of
21 BHQ®s, or products incorporating them. Biosearch is informed and believes and on this basis
22 alleges that Defendant Life Technologies was aware of the EULA’s terms, understood the
23 limitations imposed by the EULA, and agreed to be bound by the terms of the EULA.

24 10. In 2009, the United States Center for Disease Control (“CDC”) selected the
25 Biosearch BHQ® for use worldwide in testing for the H1N1 virus. Biosearch anticipated selling
26 its BHQ® probes worldwide and believed it would generate substantial sales of such probes as a
27 result of being selected by the CDC.

11. Biosearch is informed and believes, and on that basis alleges, that Defendant Life Technologies learned sometime in 2009 that Biosearch's BHQ® had been selected as the quencher of choice for use in the H1N1 probes, and arranged with a Biosearch third-party supplier, Glen Research, to purchase BHQ®s from the third-party distributor of BHQ®s. The third-party distributor's distribution rights specifically limited the use of BHQ®s to research and development only and excluded commercial, clinical, and *in vitro* diagnostic uses.

12. On information and belief, Defendant Life Technologies in contravention of the Biosearch license has sold, and continues to sell, probes labeled with Biosearch's BHQ®s at least as part of or in connection with the Influenza A (H1N1) Primer and Probe Set (Cat. No. A11400) (hereinafter the "H1N1 Kit"), marketed and sold under the "Invitrogen" brand, which may be used to clinically diagnose swine flu.

13. On information and belief, Defendant Life Technologies has sold, and continues to sell, H1N1 Kits containing Biosearch's BHQ®s to persons, entities, and/or government agencies for commercial, clinical, and/or *in vitro* diagnostic purposes, including testing and detecting the presence of swine flu.

COUNT ONE
(Breach of Contract by Defendant)

14. Biosearch repeats and realleges each and every allegation made in the previous paragraphs as if fully set forth herein.

15. On information and belief, Defendant Life Technologies breached one or more terms of the EULA by selling H1N1 Kits containing probes labeled with Biosearch's BHQ®s for commercial, clinical, and/or *in vitro* diagnostic purposes.

16. As a result of Defendant Life Technologies' breach of the EULA, Biosearch has suffered and will continue to suffer harm to its business.

17. Biosearch is entitled to specific performance and injunctive relief under the EULA, restraining Defendant Life Technologies from further sales or other uses of Biosearch's BHQ®s, or products containing the same, in violation of the EULA.

18. Biosearch is further entitled to recover from Defendant Life Technologies the actual, compensatory, and consequential damages sustained by Biosearch as a result of Defendant Life Technologies' breach of the EULA, or the value of their unjust enrichment, in an amount to be determined at trial but greater than \$25,000.

COUNT TWO
Unfair Competition
(Cal. Bus. & Prof. Code § 17200)

19. Biosearch repeats and realleges each and every allegation made in paragraphs 1-13 as if fully set forth herein.

20. Biosearch excluded "any commercial, clinical, *in vitro* diagnostic or other use" of BHQ@s, or products incorporating them because said uses are considered part of the "commercial market." Biosearch's business model includes preserving the "commercial market" for its BHQ@s, for Biosearch or its licensees.

21. On information and belief, the H1N1 pandemic was recognized by Defendant Life Technologies as an opportunity to use the BHQ@s to sell large amounts of products worldwide in the "commercial market."

22. On information and belief, Defendant Life Technologies was aware that it could exploit these commercial opportunities if it could offer BHQ@s for clinical, *in vitro* diagnostic and other non investigative uses.

23. On information and belief, Defendant Life Technologies decided to breach its license obligations to Biosearch, and exploit the commercial opportunity presented by the H1N1 pandemic. On information and belief, Defendant Life Technologies developed a scheme to exploit the fact that it was using the CDC approved BHQ@s and used Defendant Life Technologies' worldwide sales organization to market the H1N1 probes with BHQ@s. Defendant Life Technologies was aware that Biosearch was a small company with a limited sales force and distribution and that using Defendant Life Technologies' sales force and offering BHQ@s, Defendant Life Technologies would dominate the worldwide market for H1N1 probes that used the BHQ@s, and prevent Biosearch from exploiting this commercial opportunity.

24. Defendant Life Technologies purchased the BHQ®s from Glen Research, while fully aware that the BHQ®s could only be used for research. Thereafter, Defendant Life Technologies advertised that its probes contained BHQ®s from Biosearch and sold the probes for use in the commercial markets previously described. *See* Exhibit B attached hereto and incorporated herein by reference.

25. By wrongfully using the BHQ®s in contravention of the license terms, Defendant Life Technologies was able to obtain millions of dollars in sales that should have gone to Biosearch, and prevented Biosearch from exploiting the opportunity to make sales of BHQ® in the worldwide commercial market.

26. By the acts alleged in the preceding paragraph, Defendant Life Technologies has committed business acts and practices that are unlawful and unfair in violation of the California Unfair Competition Law ("UCL"), California Business and Professions Code Section 17200 *et seq.*

27. Defendant Life Technologies' business acts and practices are unlawful and unfair in violation of the UCL because Defendant Life Technologies bought BHQ®s from Biosearch and Glen Research pursuant to the EULA, which restricts the use to research and development purposes, but nonetheless used the BHQ®s for unauthorized purposes in violation of the EULA, including profiting from the commercial sales of such BHQ®s as part of H1N1 Kits.

28. Defendant Life Technologies' business acts and practices are unlawful and unfair in violation of the UCL because Defendant Life Technologies' acts impair fair and honest competition and otherwise significantly harm competition in the market for Biosearch's products.

29. Defendant Life Technologies will continue to use Biosearch's BHQ®s for unauthorized purposes, unless enjoined by the Court. By reason of the alleged acts and conduct of Defendant Life Technologies, Biosearch has suffered and will continue to suffer harm and damage, including the loss of a competitive position in the market for its BHQ®-labeled probes. The amount of this harm and damage will be difficult to ascertain, and Biosearch will be without an adequate remedy at law. Biosearch is entitled to injunctive relief restraining Defendant Life

1 Technologies from further sales or other uses of Biosearch's BHQ®s, or products containing the
2 same, in violation of the EULA.

3 30. In light of the acts and conduct of Defendant Life Technologies alleged herein,
4 Biosearch is entitled to any and all orders and judgments necessary to compensate Biosearch for
5 the harm caused to it by Defendant Life Technologies and to prevent Defendant Life
6 Technologies from continuing to engage in such unlawful, unfair, and deceptive business
7 practices intended to benefit Defendant Life Technologies to the detriment of Biosearch,
8 including restitution and injunctive relief.

9 **COUNT THREE**
10 **(Common Law Unfair Competition)**

11 31. Biosearch repeats and realleges each and every allegation made in paragraphs 1-13
12 and 20-27 as if fully set forth herein.

13 32. Biosearch invested substantial time and money in developing BHQ®s.

14 33. By using probes labeled with BHQ®s in violation of the EULA, including
15 profiting from unauthorized sales of BHQ®-labeled probes, Defendant Life Technologies has
16 gained an unfair competitive advantage over Biosearch.

17 34. Defendant Life Technologies will continue to use Biosearch's BHQ®s for
18 unauthorized purposes, unless enjoined by the Court. By reason of the alleged acts and conduct
19 of Defendant Life Technologies, Biosearch has suffered and will continue to suffer harm and
20 damage, including the loss of a competitive position in the market for its BHQ®-labeled probes.
21 The amount of this harm and damage will be difficult to ascertain, and Biosearch will be without
22 an adequate remedy at law. Biosearch is entitled to injunctive relief restraining Defendant Life
23 Technologies from further sales or other uses of Biosearch's BHQ®s, or products containing the
24 same, in violation of the EULA.

25 35. Biosearch is further entitled to recover from Defendant Life Technologies the
26 greater of restitution for any damages sustained by Biosearch as a result of the alleged acts and
27 conduct of Defendant Life Technologies, or the value of Defendant Life Technologies' unjust

1 enrichment, in an amount to be determined at trial. Biosearch is presently unable to ascertain the
2 full extent of such damages.

3 36. On information and belief, Defendant Life Technologies' conduct and actions
4 were both willful and malicious, and Biosearch is entitled to an award of punitive damages and
5 attorneys' fees against Defendant Life Technologies.

6 **COUNT FOUR**
7 **(Unjust Enrichment)**

8 37. Biosearch repeats and realleges each and every allegation made in paragraphs 1-13
9 and 20-35 as if fully set forth herein.

10 38. By reason of the alleged acts and conduct of Defendant Life Technologies,
11 Defendant Life Technologies received a benefit and unjustly retained and continues to retain that
12 benefit at the expense of and without compensating Biosearch.

13 **COUNT FIVE**
14 **Unfair Advertising**
(Cal. Bus. & Prof. Code § 17500)

15 39. Biosearch repeats and realleges each and every allegation made in paragraphs 1-13
16 and 20-35 as if fully set forth herein.

17 40. On information and belief, at least as part of or in connection with sales of the
18 H1N1 Kit, Defendant Life Technologies advertised that they had the right to sell commercially
19 Biosearch's BHQ®s or products incorporating the BHQ®s.

20 41. This advertising was untrue and misleading because Defendant Life Technologies
21 did not in fact have the right to sell commercially, probes containing Biosearch's BHQ®s or
22 products incorporating these BHQ®s.

23 42. On information and belief Defendant Life Technologies knew, or by the exercise
24 of reasonable care should have known, that this advertising was untrue or misleading at least
25 because the EULA prohibits "commercial use," which is defined as without limitation "sale[s],"
26 of Biosearch's BHQ®s, or products incorporating these BHQ®s.

27 43. Biosearch has been injured by this untrue and misleading advertising.

COUNT SIX

48. Because these BHQ@s were subject to a limited-use license, on information and belief, Defendant Life Technologies was able to purchase these BHQ@s at price far below what BHQ@s licensed for commercial uses, such as for H1N1 testing, command and are in fact sold for. Defendant Life Technologies subsequently used these BHQ@s to create kits virtually identical to the Biosearch H1N1 Kit and sold these kits in the Indian market.

49. On information and belief, Defendant Life Technologies lured potential suppliers for the Indian market into purchasing kits from it, rather than from Biosearch, by offering Defendant Life Technologies' kits at a substantial discount. Nonetheless, on information and belief, Defendant Life Technologies still reaped a substantial profit from the sales of these kits in the Indian market. As a direct result of Defendant Life Technologies' actions, Biosearch has been damaged in an amount according to proof.

50. Defendant Life Technologies' actions were undertaken with fraud, malice or oppression, or with a conscious disregard of the rights of Biosearch, and, therefore, Biosearch is entitled to an award of exemplary and punitive damages against Defendant Life Technologies in an amount according to proof.

PRAYER FOR RELIEF

WHEREFORE, Biosearch prays for judgment against Defendant Life Technologies as follows:

- (a) That Defendant Life Technologies be held to have breached the EULA;
- (b) That Defendant Life Technologies be held to have engaged in unlawful and unfair competition within the meaning of California Business and Professions Code §§ 17200 *et seq.*;
- (c) That Defendant Life Technologies be held to have engaged in unfair competition within the meaning of California common law;
- (d) That Defendant Life Technologies be held to have been unjustly enriched within the meaning of California common law;
- (e) That Defendant Life Technologies be held to have engaged in unfair advertising within the meaning of California Business & Professions Code § 17500;
- (f) That Defendant Life Technologies be held to have intentionally interfered with Biosearch's prospective economic advantage;
- (g) That the Court enjoin and restrain Defendant Life Technologies from using Biosearch's BHQ®s, or products containing the same, in violation of the EULA;

1 (h) That the Court enjoin and restrain Defendant Life Technologies from any
2 untrue and misleading advertising in connection with at least the H1N1 Kit;

3 (i) That Biosearch have an accounting for damages and for all of Defendant
4 Life Technologies' profits from its actions complained of herein;

5 (j) That Biosearch be awarded all actual, compensatory, and consequential
6 damages suffered by Biosearch by reason of Defendant Life Technologies' conduct, as well as the
7 value of Defendant Life Technologies' unjust enrichment, any profits of Defendant Life
8 Technologies', a reasonable royalty, and/or restitution that are attributable to Defendant Life
9 Technologies' breach of contract and unfair competition not taken into account in computing
10 actual, compensatory, and consequential damages, and that exemplary and punitive damages be
11 awarded as authorized under the law;

12 (k) That Biosearch be awarded its reasonable attorneys' fees in an amount to
13 be determined at trial; all costs of suit herein incurred, including investigative costs; and pre- and
14 post-judgment interest as provided by law;

15 (l) That the Court grant such other and further relief in law or equity to which
16 Biosearch may be justly entitled as the Court may deem proper.

17 Dated: April 22, 2010

Respectfully submitted,

18 MORGAN, LEWIS & BOCKIUS LLP

19
20 By: 
21 Daniel Johnson, Jr.

22 Attorneys for Plaintiff
23 BIOSEARCH TECHNOLOGIES, INC.
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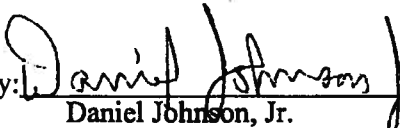
DEMAND FOR JURY TRIAL

Biosearch hereby requests a trial by jury.

Dated: April 22, 2010

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: 
Daniel Johnson, Jr.

Attorneys for Plaintiff
BIOSEARCH TECHNOLOGIES, INC.

EXHIBIT A



BIOSEARCH TECHNOLOGIES, INC.

BIOSEARCH TECHNOLOGIES, INC. COMPREHENSIVE LIMITED USE AGREEMENT**Black Hole Quencher[®], CAL Fluor[®] & Quasar Dyes^{®1} Limited Use Agreement**

The BHQ[®], CAL Fluor[®] and Quasar[®] dyes and products incorporating them are to be used for research & development purposes only and may not be used for any commercial, clinical, *in vitro* diagnostic or other use.

Products incorporating these dyes are subject to the proprietary world-wide rights of Biosearch Technologies, Inc. and are made and sold under license from Biosearch Technologies, Inc. There is no implied license for commercial use with respect to the Products and a license must be obtained directly from Biosearch Technologies, Inc. with respect to any proposed commercial use of the Products.

"Commercial Use" includes but is not limited to the sale, lease, license or other transfer of the products or any material derived there from; the sale, lease, license or other grant of rights to use the Products or any material derived or produced from them, or the use of the Products to perform services for a fee for third parties (including fee for service or contract research). Please forward all licensing inquiries to licensing@biosearchtech.com.

BHQplus[™] Probes² Limited Use Agreement

This product is covered by patents or patents pending owned by Biosearch Technologies, Inc. and Isis Pharmaceuticals, Inc. ("Isis"). Purchase of this product includes a limited license to use this product solely for internal research and development. This license specifically excludes (and you have no right to use this product for):

- (a) therapeutic or diagnostic applications (including products or services that incorporate this product),
- (b) any *in vivo* toxicity/safety study in support of an investigational new drug application (or foreign counterpart),
- (c) resale (including sale of any products or services that incorporate this product), or
- (d) gene functionalization activities (including products or services that incorporate data derived from gene functionalization activities) if such activities have commercial application, any and all of which require a separate license from Isis.

NEITHER THIS PRODUCT NOR ANY PRODUCT CREATED THROUGH ITS USE MAY BE USED IN HUMAN CLINICAL TRIALS.

In the event you have separate agreements with Isis Pharmaceuticals regarding this product which explicitly state that the foregoing is not applicable to you, your use of this product will be governed by the terms of such agreements. In no event does the limited license included with the purchase of this product expand or alter the scope of the license granted pursuant to such agreement.

Biosearch Oligonucleotide Products for Non-Coding Analysis Limited Use Agreement

BTI has been granted a worldwide license to manufacture and distribute oligos, probes and primers for non-commercial research use only (RUO) covered under patents owned by Genetic Technologies Limited (GTG). The GTG patents³ pertain to methods and processes relating to non-coding regions of all genomes. The GTG license includes Single Nucleotide Polymorphisms (SNP) genotyping and allelic discrimination for RUO.

All Oligonucleotide Products bought from Biosearch (or a Biosearch agent) and used for analysis of non-coding regions, are covered under the GTG non-coding DNA IP for non-commercial research use only (RUO). These Products may not be used for any commercial, clinical, *in vitro* diagnostic or any other non-RUO use. For Product use outside the RUO field, a license must be obtained directly from Genetic Technologies Limited.

¹ "Black Hole Quencher", "BHQ", "CAL Fluor" and "Quasar" are fully registered trademarks of Biosearch Technologies, Inc., Novato, California. The BHQ technology is protected by U.S. Patent No. 7,019,129. The CAL Fluor and Quasar technologies are covered by U.S. Patent Applications No. US2005/0170363A1 and US2005/0214834A1 respectively.

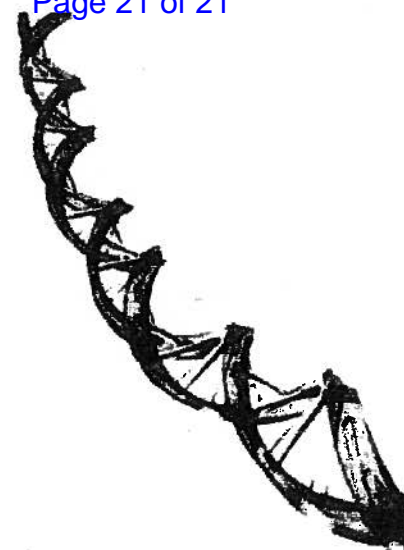
² BHQplus[™] Probes are sold for research use only under agreement with Isis Pharmaceuticals, Inc. of Carlsbad, CA.

³ The Non-Coding Patents include: US Patent No. 5,789,568; US Patent No. 5,192,659; US Patent No. 5,612,179; US Patent No. 5,851,762; and Foreign counterparts.

EXHIBIT B

Oligonucleotides

Influenza A (H1N1) Primer and Probe Set (Cat. no. A11400)



The Influenza A (H1N1) Primer and Probe Set contains the 12 primers and probes listed below. These primers and probes match the WHO/CDC Protocol titled "CDC protocol of realtime RTPCR for swine influenza A(H1N1)" and "28 April 2009 revision 1 (30 April 2009)".

Primers and probes	Sequence (5' → 3')	Concentration	Quantity
InfA Forward	GAC CRA TCC TGT CAC CTC TGA C	40 µM	10 nmol
InfA Reverse	AGG GCA TTY TGG ACA AAK CGT CTA	40 µM	10 nmol
InfA Probe ¹	TGC AGT CCT CGC TCA CTG GGC ACG	10 µM	2.5 nmol
SW InfA Forward	GCA CGG TCA GCA CTT ATY CTR AG	40 µM	10 nmol
SW InfA Reverse	GTG RGC TGG GTT TTC ATT TGG TC	40 µM	10 nmol
SW InfA Probe ²	CYA CTG CAA GCC CA*T* ACA CAC AAG CAG GCA	10 µM	2.5 nmol
SW H1 Forward	GTG CTA TAA ACA CCA GCC TYC CA	40 µM	10 nmol
SW H1 Reverse	CGG GAT ATT CCT TAA TCC TGT RGC	40 µM	10 nmol
SW H1 Probe ²	CA GAA TAT ACA *T*CC RGT CAC AAT TGG ARA A	10 µM	2.5 nmol
RnaseP Forward	AGA TTT GGA CCT GCG AGC G	40 µM	10 nmol
RnaseP Reverse	GAG CGG CTG TCT CCA CAA GT	40 µM	10 nmol
RnaseP Probe ¹	TTC TGA CCT GAA GGC TCT GCG CG	10 µM	2.5 nmol

1. TaqMan[®] probes are labeled at the 5'-end with the reporter molecule 6-carboxyfluorescein (FAM) and with the quencher Blackhole Quencher (BHQ1) (Biosearch Technologies, Inc., Novato, CA) at the 3' end.
2. TaqMan[®] probes are labeled at the 5'-end with the reporter molecule 6-carboxyfluorescein (FAM) and quenched internally at a modified "T" residue with BHQ1, with a modified 3'-end to prevent probe extension by Taq polymerase.

This product is not for sale or use in the United States.

TaqMan[®] is a registered trademark owned by Roche and licensed exclusively to Applied Biosystems in the research related fields.

Practice of the patented 5' Nuclease Process requires a license from Applied Biosystems. The purchase of the Influenza A (H1N1) Primer and Probe Set includes an immunity from suit under patents specified in the product insert to use only the amount purchased for the purchaser's own internal research when used with the separate purchase of an Authorized 5' Nuclease Core Kit. No other patent rights are conveyed expressly, by implication, or by estoppel. For further information on purchasing licenses contact the Director of Licensing, Applied Biosystems, 850 Lincoln Centre Drive, Foster City, California 94404, USA.

NOTICE TO PURCHASER: LIMITED LICENSE

A license to perform the patented 5' Nuclease Process for research is obtained by the purchase of (i) both Licensed Probe and Authorized 5' Nuclease Core Kit, (ii) a Licensed 5' Nuclease Kit, or (iii) license rights from Applied Biosystems.

The Influenza A (H1N1) Primer and Probes Set contains Licensed Probe. Use of this product is covered by one or more of the following US patents and corresponding patent claims outside the US: 5,538,848, 5,723,591, 5,876,930, 6,030,787, 6,258,569, and 5,804,375 (claims 1-12 only). The purchase of this product includes a limited, non-transferable immunity from suit under the foregoing patent claims for using only this amount of product for the purchaser's own internal research. The right to use this product in the 5' Nuclease Process under the applicable claims of US Patents Nos. 5,210,015 and 5,487,972, and corresponding patent claims outside the United States, can be obtained through purchase of an Authorized 5' Nuclease Core Kit. Except under separate license rights available from Applied Biosystems, no right under any other patent claim, or to perform commercial services of any kind, including without limitation reporting the results of purchaser's activities for a fee or other commercial consideration, or to sublicense, repack with other products, or resell in any form, is conveyed expressly, by implication, or by estoppel. This product is for research use only. Diagnostic uses under Roche patents require a separate license from Roche. Further information on purchasing licenses may be obtained from the Director of Licensing, Applied Biosystems, 850 Lincoln Centre Drive, Foster City, California 94404, USA.



www.invitrogen.com

For research use only. Not intended for any animal or human therapeutic or diagnostic use, unless otherwise stated.

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